

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

UBALDO CESAR,)	
Appellant,)	
)	
v.)	Civil Action No.: CPU4-10-004958
)	
STATE OF DELAWARE,)	
DEPARTMENT OF)	
TRANSPORTATION DIVISION)	
OF MOTOR VEHICLES,)	
Appellee.)	
)	

Date Submitted: March 1, 2011
Date Decided: March 28, 2011

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FINAL ORDER AND OPINION FOLLOWING
APPEAL FROM THE DIVISION OF MOTOR VEHICLES

Ubaldo Cesar, Appellant (hereinafter “Cesar” or “Appellant”) brings this appeal from a decision of the Division of Motor Vehicles (hereinafter “DMV”), dated July 26, 2010 revoking his driver’s license for fraudulently misrepresenting his identity pursuant to 21 *Del. C.* § 2733(a)(5)¹ and 21 *Del. C.* § 2751(a).²

¹ 21 *Del. C.* § 2733 (a)(5) states: “The Department may immediately suspend the license and driving privileges or both of any person without hearing and without receiving a record of conviction of such person of crime whenever the Department has reason to believe that such person . . . has violated § 2751 (a) or (b) of this title.”

The hearing officer concluded that sufficient evidence existed to believe that Cesar was in violation of 21 *Del. C.* § 2733 (a) (5), 21 *Del. C.* § 2751(a) and 21 *Del. C.* § 2751(b).³ The hearing officer further concluded that Cesar had fraudulently misrepresented himself to the DMV, following a hearing held on July 1, 2010.

I. Facts

On March 1, 2010, the DMV sent correspondence⁴ to Appellant notifying Appellant that his driver's license would be suspended for one (1) year because the DMV had reason to believe that Appellant may have fraudulently obtained one or more driver's licenses/identification cards. Appellant then sent correspondence⁵ to the DMV requesting a hearing be held in regard to the matter. A fraud hearing was held on July 1, 2010. The scope of the hearing covered whether the

² 21 *Del. C.* § 2751 (a) states: "A person shall not fraudulently obtain or attempt to obtain a driver's license or an identification card by misrepresentation."

³ 21 *Del. C.* § 2751 (b) states: "A person shall not in any application for a driver's license or identification card: (1) Use a false or fictitious name; (2) Make a false statement; (3) Conceal a material fact; or (4) Otherwise commit a fraud."

⁴ The letter dated March 1, 2010 from the State of Delaware Department of Transportation Division of Motor Vehicles addressed to Mr. Ubaldo Cesar at PO Box 5413, Wilmington, DE 19808 states: "The Division of Motor Vehicles (DMV) has reviewed its digital photograph database. The purpose of this review was to eliminate or adjust for any errors that have occurred during past driver license or identification card (DL/ID) transactions. The review also provided an indication that certain DLs/IDs may have been obtained fraudulently. A recent review of your record indicated that more than one Delaware DL/ID is assigned to you, and as a result of further investigation, the division has reason to believe that you may have fraudulently obtained one or more DLs/IDs. Delaware law states " . . . a person shall not fraudulently obtain or attempt to obtain a drivers license or an identification card by misrepresentation", and for those that do, DMV has the right to suspend an individual's driver license and/or identification card for one year. Accordingly, your driver license and/or identification card will be suspended for one year effective March 17, 2010. If you wish to contest the suspension of your driver license and/or identification card, you may submit a written request for an administrative hearing no later than March 16, 2010. If a written request for a hearing is filed by the above mentioned date, the suspension shall not become effective unless the final decision of the hearing officer results in a decision ruled against you. Hearing requests shall be mailed to: Delaware Division of Motor Vehicles, ATTN: Driver Improvement Section, P.O. Box 698, Dover, DE 19903-0698. If you have any questions or concerns, please call Karen Anderson at 302-744-2526. Sincerely, Chief of Driver Services, Division of Motor Vehicles."

⁵ The letter dated March 12, 2010 from Mr. Ubaldo Cesar addressed to "Whom It May Concern" states: "This letter is in reference to a letter I've recived [sic] on 03/07/10 from the State of Delaware Department of Transportation Division of Motor Vehicles (DMV) sujecting [sic] that I've multiple DLs/IDs cards and that if I don't respond by a dateline of 03/17/10 my Delaware license/id card will be suspended for 1 year. Therefore I'm requesting a hearing on this matter as soon as possible to clear any misunderstandings, I've included on this letter a copy of my driver lisencc [sic] and Delaware id card as these are the only two documents in my possession. For your convenience I've included my daytime phone# 302-699-3341 if you have any questions on this matter. Thank you in advance for your consideration. Sincerely, Ubaldo Cesar."

DMV had cause to believe that Appellant misrepresented his identity by presenting fraudulent documents; using a fictitious/false name; making a false statement; concealing a material fact and/or otherwise committing fraud, specifically whether Appellant presented at the DMV fraudulent documents in order to obtain either an identification card or a driver's license.

At the hearing, Ms. Karen Anderson (hereinafter "Anderson"), an investigator for the DMV, represented the DMV and presented the DMV's position regarding the fraud case involving Appellant. Anderson testified that in early 2009, the DMV purchased a facial recognition software program that makes a digitized image template of a person's face. The template is then sent through the entire photo database of the DMV and compares the template with the images in the photo database. Anderson further testified that the program also compares the demographic information, such as the name, date of birth and social security number with the images. The program detects the template and photo image in two ways.

First, the program looks at the template and matches all of the images in the photo database with the template. The program also looks to see if the demographic information is the same. If the program detects that the images are the same but that demographic information is different, the program reports this situation as possible fraud in what is called the duplicate analyzer.

Second, the programs looks at the template and matches the images in the photo database as well as looks at the demographic information and reports any images that are different from the template that have the same demographic information. Anderson testified that this process is reported as possible fraud in what is called the ID verifier.

Anderson further indicated that the entire DMV photo database is reviewed by the program and a specially trained staff member is then required to review each possible fraud case.

Since the program's inception, a review of possible fraud cases has led the DMV to identify 1,300 cases as fraud. Anderson testified that according to Delaware law, Title 21, Section 2751(a) and (b), a person shall not fraudulently obtain or attempt to obtain a driver's license or identification card by misrepresentation. The penalty for a violation of the above statute is the right of the DMV to suspend an individual's driver's license for one (1) year.

Anderson then submitted information and documents the DMV discovered that indicated to the DMV that Appellant fraudulently obtained a driver's license and identification card in the name of Edwin Padilla (hereinafter "Padilla"). Appellant inquired of Anderson as to whom Edwin Padilla was and further stated that he did not know who that person is. Anderson submitted into evidence photographic images of Appellant and Padilla along with corresponding information. Appellant stated that the image of Padilla "was not even me. This guy, he is wearing glasses." Anderson further submitted into evidence images that are in the DMV system, one picture of Padilla and two pictures of Appellant with the noted differences that came up in the DMV's system.

Anderson submitted into evidence color photos and testified that it is the State's position that all three individuals are the same person. Anderson stated that she includes the color photos because sometimes the copies may be difficult to see. Anderson explained the remaining documents contained within Exhibit A.

She testified that pages four through eight were enlarged photos that the DMV has of Appellant which are licensing photos from November 3, 2006 and that pages nine through thirteen were the photos on file that the DMV has for Padilla from November 18, 1999. Further, pages five and ten depicted the measurements through the eyes of the images. Anderson stated that it was difficult to tell because Padilla wore glasses in the photo but that was the reason for

the inclusion of the color images which consisted of pages six and eleven indicating additional measurements. Pages seven and twelve depicted the angle of the ears in relation to the head and pages eight and thirteen depicted the commonalities found by the DMV consisting of the shape of the ears, the eyes, the nose, the nostril, the bridge of the nose and the shape of the mouth and chin. Anderson reiterated that it was the contention of the DMV that Appellant and Padilla are the same individuals.

Anderson then submitted into evidence Exhibit B which consisted of the documentation, the DMV records and files for Appellant. The first included such information and included a driver's license and identification bearing the original issue date of August 5, 1985 for the driver's license and November 3, 2006 for the identification card. Exhibit B included the photos that the DMV had on file as well as the driving record inclusive of page eight of the exhibit. Further, Anderson stated that the exhibit included all of the photos that the DMV has on file for Appellant.

Pages nine through twelve consisted of the applications that the DMV has on file for identification cards and drivers licenses for Appellants which appeared to be all renewals. Pages thirteen through seventeen contained documentation on file with the DMV for Padilla. Anderson testified that Padilla has a driver's license and identification card but that the driver's license had no specific issue date.

Anderson stated that in looking at page fifteen of the exhibit, the records date back to at least 1987 for the driver's license and the identification card had an issue date of November 18, 1998. Further, according to Anderson, the DMV has records of the identification card application information in regard to payment. Anderson testified that the identification card for Padilla was issued on November 18, 1998; however, the driver's license for Padilla dates back to

at least 1987 but that there was no original issue date on the file. Anderson concluded her testimony by testifying that the DMV has only one photograph in their database for Padilla which was presented as page fifteen of Exhibit B.

Appellant stated that he had no questions for Anderson and presented his testimony. Appellant testified that he does not know Edwin Padilla nor had he ever met such person. Appellant stated that at the time that the notification from the DMV regarding the allegation of fraud was sent he was not in the country. Appellant explained that his grandmother passed away in February 2010. When Appellant returned to the United States from the Dominican Republic, he presented his United States passport. Appellant stated that if one were to look through his passport, one would see the entrance into and leaving from the United States and the Dominican Republic. Upon his return to the United States, Appellant received the notification from the DMV and contacted the DMV in regard to the same.

Appellant testified that he possesses dual citizenship as a United States citizen and a Dominican passport. Appellant denied the existence of Padilla. Appellant presented photographs to the hearing officer which consisted of the second driver's license or identification card that Appellant holds with the State of Delaware. Appellant explained that he has relocated to three different locations within the state.

Appellant further stated that he moved to California in 1988 or 1989 and that he obtained an identification in California in order to attend school there. Appellant also presented an identification from Widener University from at a time when he was a student there and worked in housekeeping but indicated that his last name may be misspelled on such identification. Appellant presented photos and identification from Delaware Technical and Community College to which he stated that he attended as a student in 1989 or 1990 when he returned from

California. Appellant further presented a current identification from Del Tech and a current identification from PNC Bank which Appellant stated that he is employed.

Appellant testified that he worked for First Data which is a very sophisticated place that deals with fraud detection and handles a lot of banking transactions. Appellant presented his photo identification bearing his name. Appellant presented his current Delaware driver's license and picture identification and also stated that he had credit cards, YMCA identification, BJ's card, Costco card and offered them for viewing by the hearing officer. Appellant presented his social security card and stated that initially, when he came to the United States, a mistake had occurred in which his social security card bears the name Osbaldo and that his name is Ubaldo as reflected on his Dominican passport. Appellant further stated that he had a library card, credit cards, insurance card and debit cards from his banks. Anderson inquired of Appellant as to whether he had contacted the social security administration to notify them of the incorrect name.

Appellant stated that he had not done so because he has had time to do that but that in the future he will. Anderson then advised Appellant to contact the social security administration so that the mistake may be corrected and also advised Appellant not to allow the social security administration to issue him a new number.

Appellant then stated that he purchased a ticket somewhere and had the credit card in which he used to pay for such ticket; that he had pay stubs from his most current job at PNC Bank reflecting that he was paid for such employment; that he had medical bills, insurance, Artesian water bills, bank statements and credit card statements. Appellant further stated that he has two mortgages with GMAC because he also purchased a property which is a single-family home that he owns in addition to his condominium.

Appellant testified that he has “a whole bunch of stuff” that per the request of the hearing officer he could provide such as his phone bill as he stated that he has been an AT&T customer since they were Cingular One in 1989. Appellant also testified that he could provide credit reports from two credit bureaus because when he received the notification from the DMV, he believed that someone was using his identification.

Anderson then asked questions of Appellant. Appellant stated that he came to the United States in March 1983 when he was 13 or 14 years of age and that the port of entry was in Miami, Florida. Further, Appellant stated that his mother resided in South Carolina and that is where he received all his American documents such as his social security card. Appellant stated that at that time he was very young and this family moved to New York and resided there for approximately six months before settling in Delaware in the fall or winter of 1983. Appellant testified that he graduated from AI DuPont High School in June 1987.

In 1987, Appellant left Delaware to move to California for schooling and returned to Delaware in 1989. Upon his return to Delaware, Appellant enrolled in Delaware Technical and Community College but ceased schooling in order to obtain employment in which he became employed with Discover Card Financial Services from approximately 1990 until 1999. Appellant thereafter worked at different banks such as Chase, Bank One and First Data and is currently employed by PNC Bank. Appellant stated that he has two children, his first born in 1998 and his second born in 2005 and that he pays child support for his firstborn child. Appellant further stated that he has resided in Delaware all his life, especially after he returned to Delaware from California. Appellant denied ever entering the United States under a different name. Appellant acknowledged that he had reviewed the photos presented by the DMV but

stated that Padilla is wearing glasses. Appellant further acknowledged that it is him in the photos bearing the name of Ubaldo Cesar and that he provided identification of his identity as such.

Appellant denied knowing who Padilla is and stated that in looking at the shape of his head in the two pictures that Padilla has a much bigger head than Appellant. Appellant also indicated that he had different hairstyles in 1997 and 2007. When asked by Anderson if the photos of Appellant and Padilla look similar, Appellant replied “Not to me. To me, that’s not me.” Appellant further stated that in looking at all of his pictures, he has never worn glasses in his life and that he can produce identification from the 1980s. Appellant denied that he ever wore glasses or contact lenses.

The hearing officer then asked questions of Appellant. Appellant admitted that he remembered that in November 1997 he was declared a habitual offender and had his driver’s license revoked for five years. At the time, Appellant acknowledged that he was employed by Discover Bank and resided in Wilmington, Delaware. When asked by the hearing officer if in order to get back and forth to work he may have posed as Padilla in order to obtain a driver’s license to have in the event that he was stopped by the police, Appellant stated that he did not and that he followed the law and that was the reason that he applied for the reinstatement of his driver’s license in 1999 or 2000.

Further, Appellant stated that, during the time of his driver’s license revocation, his girlfriend would drive him to work until he reestablished his license and that since that time, he has not had any problems with the law.

Appellant stated that he did not understand how the facial recognition software works when asked by the hearing officer but did state that he comprehended what Anderson explained in her presentation. However, Appellant further stated that he does not work in that capacity and

is not able to say that he knows the program or how it works but that he did understand what Anderson explained to him. The hearing officer explained that from her understanding of conducting fraud hearings that the software is very specific in that it even measures the retinas of the eyes and that in viewing the face alone, the program has 80,000 points.

Further, the hearing officer explained that when Anderson, acting as the investigator, receives a possible fraud, she runs Appellant and his picture through the face explorer and Padilla is returned which indicated to Anderson that the system is searching for 80,000 points on the face, including the retinas of the eyes. The match that appeared matching the points on Appellant's face and Appellant's facial features was Padilla despite Padilla wearing glasses. Appellant responded to the explanation given by the hearing officer by stating that "Okay. Well, like I say, I don't know your system. I don't know your machine. I can never speak to you about that system. But that guy that is there, Edwin Padilla, whatever the name is, that's not me."

Appellant further stated that he could provide his identifications and earliest identifications to prove that he never had any other name but the name that his father gave him which is Ubaldo Cesar and that he does not have a middle name. Further, Appellant stated that if one were to review all his documents, even his United States and Dominican passports, one would see that he does not have any other name. Appellant indicated that since early on, he has shown pictures and that he apologizes for not providing all his pictures from school because schools provide individuals with identification. Appellant again stated that he has always been Ubaldo Cesar and that he does not know who Padilla is and that he has never had any other name but Ubaldo Cesar.

Appellant then testified that even though he was convicted of Driving Under the Influence, he never went to the DMV to obtain any identification or driver's license and that further Anderson stated that Padilla never held a driver's license. Anderson responded by stating that Padilla had a driver's license and identification. Appellant stated that Padilla had a driver's license in 1987 to which Anderson responded that 1987 was the first time that Padilla was in the DMV's system. Appellant further stated that in 1987 he was in high school in Delaware. Anderson responded by stating that age is not relevant in these matters and indicated a photograph from 1998 of Padilla. Anderson further stated that even though the license and identification, or the license started in 1987, Padilla continued through and had a picture taken at the DMV in 1998. Appellant responded by stating that the DMV has his driving record and that his license was suspended and that he was also involved in an accident in 1996.

In summation, Anderson stated that it is the duty of the DMV to confirm the identity of all persons who receive driver's licenses or identification cards. This duty is performed through a variety of resources, one of which is the facial recognition software. Further, driving is a privilege and that privilege is represented by the driver's license issued by the DMV. The DMV must suspend driving privileges if it determines that an individual misrepresented themselves in order to obtain a license or identification card.

It is the DMV's position that Ubaldo Cesar misrepresented himself, as shown through the investigation of records, and that his license should be suspended for one (1) year pursuant to Title 21, Section 2733 (a)(5)(E).

In summation, Appellant stated that he never obtained any identification in any other state or country with a different name and that he has shown proof from early day that "I am who I am, who I say that I am." Further, he had presented all his documents and that he had his

mortgages, bills and everything that one could think of and that the only name is under his name, Ubaldo Cesar and that the DMV has access to information such as his identification and record. Appellant stated that he provided access to his United States passport, Dominican passport because he holds citizenship and that is the only name that he has.

Appellant further stated that he does not know where the DMV is obtaining their information but that Padilla is not him because he never wore glasses and never had a beard. Appellant stated that he has been a banker since 1990 and that he is still employed in banking as well as attending school at Delaware Technical and Community College. Appellant indicated that the DMV could follow through and check all their information and follow what he provided.

Appellant stated that all of his information, especially his passport since he left the United States in February was obtained through Homeland Security and that if he would have committed fraud, he would have been detained at the airport either in the United States or in the Dominican Republic and that he would be incarcerated. Appellant reaffirmed that he has never had any other name but his name and that his picture identifications since early on show that he never had any other name.

Anderson declined to offer rebuttal at which time the hearing officer concluded the hearing.

II. Standard of Review

The standard of review of an appeal from an administrative decision of the DMV is on the record, and, as such, is limited to correcting errors of law and determining whether substantial evidence exists to support the hearing officer's factual findings and conclusions of law.⁶ Therefore, the decision will stand unless the Court finds the hearing officer's findings are

⁶ *Lundin v. Cohan*, 2009 WL 188001 at *2 (Del. Com. Pl. Jan. 28, 2009) citing *Shahan v. Landing*, 632 A.2d 1357 (Del. 1994); *See also Howard v. Voshell*, 621 A.2d 804 (Del. 1992); *Eskridge v. Voshell*, 593 A.2d 589 (Del. 1991).

not supported by substantial evidence in the record or are “not the product of an orderly and logical deductive process.”⁷ If substantial evidence exists in the record below, this Court “may not re-weigh and substitute its own judgment for that of the Division of Motor Vehicles.”⁸ However, “when the facts have been established, the hearing officer’s evaluation of their legal significance may be scrutinized upon appeal.”⁹ However, “the Division’s understanding of what transpired is entitled to deference, since the hearing officer is in the best position to evaluate the credibility of witnesses and the probative value of real evidence.”¹⁰

III. Opinion

In this appeal, Appellant advances two arguments: 1) Appellant was denied due process by being accused of fraud and was not advised of when or how the alleged fraud was committed prior to the hearing; and 2) the hearing lacked substantial evidence upon which a hearing officer could rely on to find that Appellant committed fraud. The Court shall address each argument in turn.

a. Denial of Due Process

Appellant contends that on March 7, 2010, he received a letter from the DMV stating that his license would be suspended due to fraudulent activity. Appellant requested a hearing on March 12, 2010. Appellant asserts that he received no prior notice of the evidence that would be presented against him, that he had a right to an attorney and that he had a right to present witnesses and evidence at the hearing. Appellant further asserts that during the hearing on July 1, 2010, when Anderson presented evidence on behalf of the DMV, it was the first time that

⁷ *Lundin* at *2 citing *Quaker Hill Place v. State Human Relations*, 498 A.2d 175 (Del. Super. Ct. 1985).

⁸ *Wayne v. Division of Motor Vehicles*, 2004 WL 326926 at *1 (Del. Com. Pl. Jan. 22, 2004) citing *Barnett v. Division of Motor Vehicles*, 514 A.2d 1145 (Del. Super. Ct. 1986); *Janaman v. New Castle County Board of Adjustment*, 364 A.2d 1241, 1242 (Del. Super. Ct. 1976).

⁹ *Voshell v. Addix*, 574 A.2d 264 (Table) (Del. 1990); 1990 WL 40028 at *2 (Del.).

¹⁰ *Id.*

Appellant was informed that he was there for an incident that allegedly occurred on November 18, 1998. During the course of Anderson's testimony, she introduced evidence, including photographs and DMV records that Appellant had never seen previously nor were they made available to him.

Courts have consistently held that suspension of a driver's license is a civil proceeding as opposed to a criminal hearing.¹¹ As an administrative hearing is a civil proceeding as opposed to a criminal proceeding, there is no right to an attorney. However, the licensee is entitled to a fair hearing.¹² A licensee who is faced with suspension of his driver's license is entitled to a due process hearing¹³ and the hearing must be meaningful.¹⁴ At the same time, a suspension or revocation hearing need not have all the procedures and formalities of a court action in order to meet the requirements of due process.¹⁵ Further, it is required that hearings be recorded and transcribed to ensure that due process has been afforded.¹⁶

Appellant argues that the level of due process that he was entitled to, but denied, should be along the same lines as those who face suspension under 21 *Del. C.* Chapter 28. In habitual offender petitions filed with the Court, the licensee is given notice of the particular predicate convictions upon which the State relies upon to justify suspension of the licensee as a habitual offender in order to request a court order. The licensee in those proceedings is provided with the actual allegations against him as well as time to prepare a defense.

If the Legislature intended the notice and provisions for license suspensions based upon fraud to be the same as those for suspension/revocation as a habitual offender, then the statutes

¹¹ *State v. Kamalsi*, 429 A.2d 1315, 1318-19 (Del. Super. Ct. 1981).

¹² *In re Sweeney*, 257 A.2d 764 (Del. Super. Ct. 1969).

¹³ *Kamalsi*, 429 A.2d 1315.

¹⁴ *Bell v. Burson*, 402 U.S. 535 (1969).

¹⁵ *Sweeney*, 257 A.2d 764.

¹⁶ *Husbands v. Shahan*, 2002 WL 561010 (Del. Super. Ct. Feb. 27, 2002).

and procedures would be identical in nature but they are not. For the DMV to suspend the license of an individual based upon fraud, minimum notice and the opportunity for a hearing are all that are required. The DMV provided notice and an opportunity for a hearing to Appellant. The notice dated March 1, 2010 provided by the DMV to Appellant stated that the DMV had reviewed its digital photograph database for the purpose of eliminating errors that may have occurred during past DLs/IDs transactions and to look for an indication that certain DLs/IDs may have been obtained fraudulently.

Additionally, the notice stated that a recent review of Appellant's record by the DMV indicated that more than one Delaware DLs/IDs were assigned to him and that as a result of further investigation, the DMV has reason to believe that he may have fraudulently obtained one or more DLs/IDs. The notice provided Appellant with the reason for which the DMV sought to suspend Appellant's DL/ID.

Further, the notice gave Appellant the opportunity for an administrative hearing to contest the DMV's initial determination and also provided Appellant with the name of a DMV employee and a telephone number in which to contact that individual if he had any questions or concerns. Appellant then requested a hearing in writing and noted in his writing to the DMV that the DMV was alleging that he had multiple DLs/IDs. Appellant acknowledged in the writing the very basis for which the DMV sought to suspend his DL/ID.

DMV investigator Anderson testified regarding the DMV's investigation, based upon the digital photograph database referenced in the March 1, 2010 notice provided to Appellant. Appellant testified at the hearing and presented evidence. Though Appellant argues that he did not understand the software used by the DMV, he did admit at the hearing, after explanation from the hearing officer, that he understood the testimony of Anderson. It appears, in essence,

that Appellant did not understand the inner workings and technicalities of the software because he does not use that type of software, not that he lacked the ability to understand the evidence presented and comprehend the significance of such testimony and evidence. Knowledge and understanding of the technical workings of the software is not required in order for the hearing to be meaningful. Appellant comprehended and understood the testimony and evidence as it was presented and explained by Anderson.

The March 1, 2010 notice provided to Appellant by the DMV complied with the minimal requirements of due process under the Delaware¹⁷ and United States Constitutions. The notice apprised Appellant that the DMV had reason to believe that he held more than one Delaware DLs/IDs and that one or more of those may have been fraudulently obtained.

The notice provided to Appellant with an opportunity for a hearing which Appellant availed himself of and provided testimony and evidence disputing the contentions of the DMV was sufficient and therefore, this Court does not find that Appellant's due process rights were violated.

b. Lack of Substantial Evidence

Appellant argues that the DMV presented little, if any, substantial evidence to prove that he committed fraud. Appellant further argues that there was no evidence introduced to prove the reliability and accuracy of the DMV investigator's testimony or her expertise in using or understanding the software. Appellant argues that the DMV must present more than a

¹⁷ 21 Del. C. § 2733(b) sets forth the minimum due process requirements for the suspension and hearing process for licensees. 21 Del. C. § 2733(b) states: "Whenever the Department suspends the license of any person for any reason set forth in subsection (a) of this section, the Department shall immediately notify the licensee and afford the licensee an opportunity of a hearing before the Department in the county wherein the licensee resides. Upon such hearing the Department shall either rescind its order of suspension or, good cause appearing therefor, may suspend the license of such person for a further period or revoke the license."

declaration that the software works and that Appellant has committed fraud based upon the representation that that is how the software interprets the data.

Appellant further argues that the DMV should be required to introduce evidence by an expert in the same manner and with the same foundation as any scientific evidence. Appellant asserts that he did not understand the facial recognition software after the DMV presented evidence and that the notice provided to him by the DMV never informed him what would be presented at the hearing, if he could present evidence or witnesses at the hearing or if he could have an attorney present. Appellant further argues that the pictures of him submitted by the DMV and the reliability of the equipment lacked foundation or chain of title. Appellant contends that because the DMV's only evidence presented at the hearing was their opinion that the software works and that Appellant committed fraud is not enough to find that Appellant committed fraud.

Civil violation of 21 *Del. C.* § 2751(a) are handled by the DMV directly and not through a criminal proceeding. The DMV exercises their discretion pursuant to 21 *Del. C.* § 2733(a). Administrative proceedings are not subject to strict adherence to the rules of evidence.¹⁸ Thus, it

¹⁸ However, an administrative hearing need not observe all the procedures and formalities of a court action. *See In The Matter of Charles J. Sweeney*, 257 A.2d 764, 765 (Del. Super. Ct. 1969); *Morris v. Shahan*, 1993 WL 141861 at *2 (Del. Super. Ct. Apr. 8, 1993) (“although there is no statutory authority for the proposition, it is generally accepted in Delaware that strict adherence to the rules of evidence is not required in administrative proceedings.”); *Morris v. Shahan*, 1993 WL 141861 at *2 (Del. Super. Ct. Apr. 8, 1993) citing *See, e.g., In The Matter of Charles J. Sweeney*, 257 A.2d 764, 765 (Del. Super. Ct. 1969) (“A suspension or revocation hearing before the Commissioner need not have all the procedures and formalities of a court action in order to meet the requirements of due process, but a defendant has the right to be confronted by his accuser’- refusing to permit police officer's report to be admitted into evidence when officer not present”); *Saxton v. Voshell*, C.A. No. 90A-JN-12, Toliver, J. (Del. Super. Ct. April 9, 1991) (citing *Sweeney*, 257 A.2d at 765 “for the proposition that in revocation proceedings ‘strict adherence to the Delaware Rules of Evidence [is] unnecessary’- permitting officer who did not perform the calibration tests on an intoxilyzer machine to admit the results into evidence”); *Reams v. Division of Motor Vehicles*, C.A. No. 90A-09-12, Goldstein, J. (Del. Super. Ct. Feb. 28, 1991) (“the DMV is not bound by the Delaware Rules of Evidence’- but holding that it was within the hearing officer's discretion to refuse to admit the officer's recollection of intoxilyzer test results without the evidence card he recorded them on”). *Morris v. Shahan*, 1993 WL 141861 at *2 (Del. Super. Ct. Apr. 8, 1993); *Baker v. Hospital Billing & Collection Service, Ltd.*, 2003 WL 21538020 at * 3 (Del. Super. Ct. Apr. 30, 2003) citing *Ridings v. UIAB*, 407 A.2d 238, 240 (Del. Super. Ct. 1979); *Henson v. Div. Of Motor Vehicles*, 1993 WL 331105 at *2 (Del. Super. Ct. July 19, 1993) (“Administrative boards

was not necessary for the DMV to provide expert testimony or lay a foundation or chain of title. The DMV first discovered potential fraud regarding Appellant's license as a general review of the entire database. The DMV's facial recognition software indicated that fraud may have occurred with respect to Appellant. An employee, trained in the software, reviewed the data with respect to Appellant.

The DMV relied upon their own records to reach the conclusion that it did. Thus, the DMV concluded, based upon their investigation, that Appellant committed fraud. Appellant, though he contests that he received notice of his ability to do so, presented extensive testimony and evidence.

The hearing officer found that Appellant fraudulently misrepresented his identity based upon the following: 1) the facial recognition software used by the DMV clearly indicates through comparison of facial features that Appellant did pose as Padilla on 11-18-98 to obtain a driver's license and identification card; 2) the State presented photographic evidence that the facial recognition software produced and the investigators completed their analysis of the documents to verify that the system was correct; 3) the investigator's testimony was that the system produces the template of Appellant's facial features and matches all the images in the database to the template; 4) the software also looks to see if the demographic features are the same; 5) from the software results, the investigator concluded that Appellant and Padilla were the same person determined to be Appellant; 6) Appellant's claim that the Padilla is not him because he does not wear glasses does not affect the accuracy of the facial recognition software

are not constrained by the rigid evidentiary rules which govern jury trials, but should hear all evidence which could conceivably throw light on the controversy.”).

which produced the two images; and 7) no other images exist within the DMV database for Padilla other than what was presented in evidence at the hearing.

This Court is required to review the administrative decision of the DMV to: 1) correct errors of law and 2) determine whether substantial evidence of record exists to support the findings of fact and conclusions of law. This Court is unable to re-weigh the evidence presented at the hearing and substitute its own decision for that of the hearing officer. “Substantial” means “such evidence of sufficient as a reasonable mind might accept as adequate to support the conclusion.”¹⁹ This Court provides deference to the decision of the hearing officer because the hearing officer is in the best position to weigh the evidence presented and the testimony given. The Court finds that the hearing officer possessed substantial evidence in which to reach the conclusion that Appellant committed fraud.

The facts in the record are sufficient to support the hearing officer’s conclusion that Appellant committed fraud under 21 *Del. C.* § 2751(a) and (b). Consequently, the Court concludes that the hearing officer’s decision suspending Appellant’s license was not a violation of Appellant’s due process and is supported by substantial evidence and applicable law and is hereby **AFFIRMED**.

IT SO ORDERED this 28th day of March 2011.

John K. Welch
Judge

/jb

cc: Ms. Tamu White, Chief Case Manager
Civil Division, CCP

¹⁹ *Tulou v. Raytheon Service Co.*, 659 A.2d 796, 802 (Del. Super. Ct. 1995) (citations omitted).